

-----Original Message-----

From: Melissa Ernst [mailto:melissa.l.ernst@gmail.com]  
Sent: Wednesday, September 19, 2007 9:17 AM  
To: Trombley, Steve  
Subject: Fwd: Aurora Resident Asking you to Support Planned Parenthood

----- Forwarded message -----

From: Chris Beykirch <realtorchris@sbcglobal.net>  
Date: Sep 18, 2007 9:28 AM  
Subject: Re: Aurora Resident Asking you to Support Planned Parenthood  
To: Melissa Ernst <melissa.l.ernst@gmail.com>  
Cc: AldermanSchuler@aol.com, w2aldermangarza@yahoo.com, skifowit@yahoo.com, ricklawrence@sbcglobal.net, wpeters@aurora-il.org, smewmaw@aurora-il.org, shartburns@aurora-il.org, AldermanKeith@aol.com, LDElmore@aol.com

Melissa-

Since you decided to make your e-mail widely public, I did too. I gave you a perspective on the issue that I felt you should know. I think PP and its leaders are widely deceptive to the governments of communities all around the U.S. I do not like the fact they took our ability to plan out of our hands with their deception. I can't imagine that even a pro-PP person could see that the long term effects of their location are not good for my neighborhood.

You touched on my morality. I have never been a Pro-Life activist, but I am Pro-Life. I do believe life begins at conception. Why else would people put ultrasounds on their refrigerator? Even though I am elected, I come to the office with life experiences that lead me one way or another. I am Pro-Life. I will also abide by the law of the land as I am sworn to do. I will not go along with it though until the law says I must. I will also never think positively about a "medical practice" that will perform abortions on minors without parental consent regardless of their extremist ideals of why they should be allowed to.

I hope you understand I am entitled to an opinion as much as you.

Chris Beykirch

----- Original Message -----

From: Melissa Ernst <melissa.l.ernst@gmail.com>  
To: Chris Beykirch <realtorchris@sbcglobal.net>  
Cc: AldermanSchuler@aol.com; w2aldermangarza@yahoo.com; skifowit@yahoo.com; ricklawrence@sbcglobal.net; wpeters@aurora-il.org; smewmaw@aurora-il.org; shartburns@aurora-il.org; AldermanKeith@aol.com; LDElmore@aol.com  
Sent: Monday, September 17, 2007 9:01:59 PM  
Subject: Re: Aurora Resident Asking you to Support Planned Parenthood

Alderman Beykirch,

Thank you for responding to me and letting me know your mind is already made up. I, for one, walk my child by that office with pride, and will teach her that an organization that allows for education, responsible health care and birth control will do more to PREVENT abortions, something I am morally against, than any anti-choice protest ever could. I will tell my children that on the corner where we shop, there is a place where women can afford to be responsible and plan their parenthood properly.

And I will tell them that a place like Planned Parenthood isn't something that should be hidden away, as if the world is ashamed that people choose to exercise what is still a right in this free country of ours. That a facility that is well built and well protected isn't an eyesore in any community. And that protesters are a piece of what makes our country great- that we can disagree peacably.

As for your claims of an admitted deciet, I would ask what your reaction to this claim from Planned Parenthood:

As a factual matter, the complaint notes that Planned Parenthood had publicly announced its intention to operate a medical facility providing a full range of reproductive services - including birth control, family planning counseling and abortions - in a front-page Chicago Tribune story in late July, well before the city issued the temporary occupancy permit on August 16.

...Furthermore, PP/CA issued more than \$8 million in tax-exempt bonds through the Illinois Development Finance Authority in May 2007, a process that required extensive documentation and notices published in newspapers. In those disclosures, PP/CA disclosed that the named developer of the facility, Gemini Office Development, was affiliated with PP/CA.

Your e-mail indicates your moral disapproval of the services Planned Parenthood provides. What it does not indicate is whether or not the council does any research into the buildings permits in my city. If a group of anti-choice persons could "figure out" Gemini Office Development was an affililate of Planned Parenthood, where was it in your research of the initial proposal?

Isn't it sad that in 2007, an organization that operates under the law and for underinsured women and men of the community has to use tactics to avoid its workers being harrassed, its property being destroyed and abused. Isn't that the bigger lesson here? It is to me.

Sincerely,  
Melissa Ernst

On 9/17/07, Chris Beykirch <realtorchris@sbcglobal.net> wrote:

>  
> Melissa-  
>  
> If Planned Parenthood would have been upfront with the city, we could have  
> done a much better job of helping them locate. As it is, based on their  
> admitted deceit, they will be located to the major grocery and video store  
> in the area. We will have to parade our children past protests and face the  
> fact daily that lives are being aborted in that building. I do not pass  
> judgement on supporters of PP, but I will tell you they are a deceitful  
> organization and I am angry that they located where they did without ever

> consulting anyone in our government.

>  
> Thank you,  
> Alderman Chris Beykirch  
> Ward 8  
>  
>

> ----- Original Message -----

> From: Melissa Ernst <melissa.l.ernst@gmail.com>  
> To: AldermanSchuler@aol.com; w2aldermangarza@yahoo.com;  
skifowit@yahoo.com;  
> ricklawrence@sbcglobal.net; wpeters@aurora-il.org;  
smewmaw@aurora-il.org;  
> shartburns@aurora-il.org; realtorchris@sbcglobal.net;  
AldermanKeith@aol.com;  
> LDElmore@aol.com  
> Sent: Monday, September 17, 2007 8:28:45 PM  
> Subject: Re: Aurora Resident Asking you to Support Planned Parenthood  
>  
>

> Dear City Council Members,  
> I was sorry to hear the opening of the Aurora Planned Parenthood has  
> been postponed. It is a loss to the community and to the women who had  
> appointments this week.  
>

> How long does the city council lawyers need to go over the documents  
> regarding the opening of this facility? I sincerely hope the goal of  
> the council and these lawyers is to swiftly and efficiently review the  
> documents, not to drag out a process or search for loopholes in the  
> agreement. While I respect the legal process, I do not understand what  
> the results of the legal review will change- is Planned Parenthood  
> really not welcome in our community? Would there be more council  
> meetings?  
>

> I wish I understood the process that is being followed. The appearance  
> of the actions of the council to date seem to pit the city against the  
> facility, and I sincerely hope a decision has not already been made in  
> your minds against the facility. As I had stated in my previous  
> letter, it is my belief that those who approve of the facility have  
> not yet been called to any sort of action- if you were to hear from  
> the community as a whole, you would find much support for this  
> facility.  
>

> ank you for your time,  
> Melissa Ernst  
> 1570 Kathy Court  
> Aurora, 60504  
>  
>

NOTE: Confidential Information - This transmission and any files, which may accompany the transmission, contain information belonging to Planned Parenthood/Chicago Area which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited and illegal. If you have received this transmission in error, please immediately notify us by telephone at (312) 592-6815 to arrange for the return of the transmission and any accompanying files.

# **EXHIBIT 10**

002013

----- Forwarded message from  
anonymous@ip-208-109-98-189.ip.secureserver.net -----  
Date: 17 Sep 2007 15:28:11 -0700  
From: anonymous@ip-208-109-98-189.ip.secureserver.net  
Reply-To: anonymous@ip-208-109-98-189.ip.secureserver.net  
Subject: Support the Aurora Planned Parenthood facility  
To: info@auroraplannedparenthood.org

mzklowie@hotmail.com

Name: Kelli Haley  
Address: 2828 Village Green Dr., Aurora, IL 60504  
Email: mzklowie@hotmail.com

Dear Aurora City Council:

Please open the Aurora Planned Parenthood.

I just moved to this area in February of 2006. When time came around for my annual exam, I tried to get appointments at several of the local clinics, hospitals, etc., all of which had at least a 3 month waiting list for new patients. As a result, I had to drive to Bolingbrook just to be seen. My insurance does not cover a yearly exam, so I had to pay \$300 for my screening. 15 minutes of the doctor's time cost me 3 days of work.

Last Friday, I called the Aurora Planned Parenthood, and they informed me that not only could I get in this Thursday (my exam has been canceled as a result of the delayed opening, but I fully intend on

002014

calling back tomorrow to reschedule), but that the exam would also cost \$150. Half the price, none of the wait.

There are many women in this area who need this clinic open so they too can seek women's health. Women need a convenient, trusted place to go to receive comprehensive, quality services. Planned Parenthood is more than an abortion clinic. I think it would be interesting to see how many unplanned pregnancies (which could result in abortions) are prevented by the people of Planned Parenthood every day.

And to be honest with you, I had no idea that Planned Parenthood even administered abortions until I saw the protesters.

So, again, please open the Aurora location. You will see that this decision will result in far more good than bad.

Sincerely,  
Kelli Haley

----- End forwarded message -----

NOTE: Confidential Information - This transmission and any files, which may accompany the transmission, contain information belonging to Planned Parenthood/Chicago Area which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited and illegal. If you have received this transmission in error, please immediately notify us by telephone at (312) 592-6815 to arrange for the return of the transmission and any accompanying files.

002015

# EXHIBIT I

**Ergo, Carie Anne**

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**From:** RealtorChris  
**Sent:** Tuesday, September 04, 2007 12:56 PM  
**To:** Ergo, Carie Anne  
**Cc:** Nelson, Chuck  
**Subject:** Re: Comments

Carie Anne-

Thank you for your reply. I am sure you and the Mayor don't intend any disrespect. I am sensing in the e-mails I am receiving a sense that they feel upset with the attorney originally selected and are blaming the Mayor. I am responding in kind that the Mayor selected a good attorney who would have been capable. The problem is he was a little too close and ultimately not a good choice. I just think the Mayor should be careful as the group against PP is very motivated.

CB

----- Original Message -----

**From:** "Ergo, Carie Anne" <CErgo@aurora-il.org>  
**To:** RealtorChris <realtorchris@sbcglobal.net>  
**Cc:** "Nelson, Chuck" <CNelson@aurora-il.org>  
**Sent:** Tuesday, September 4, 2007 12:42:13 PM  
**Subject:** RE: Comments

Chris,

I appreciate you taking the time to express your thoughts.

The Mayor and I have publicly expressed significant concern about the tactics Planned Parenthood used in locating in Aurora. The first two quotes you chose to highlight below are only relevant to the hiring of Mr.. Martens. Recognizing the concerns of yourself and other Aldermen, you now have the opportunity to select an independent attorney of your choice.

It is important for the public to understand the impact of any decision, the Mayor or City Council makes regarding the opening of Planned Parenthood. If an evaluation of the facts by an attorney concludes that neither Gemini or PP were outside of the bounds of the law, denying an occupancy permit could open Aurora up to a costly lawsuit, which the Administration believes is relevant to the overall discussion.

My comments were in no way meant to be disrespectful of the legitimate concerns regarding Planned Parenthood from yourself, other Aldermen or community members. The Mayor values your support and your opinion, so I will ask Chuck to share these concerns with him in my absence.

Cordially,  
Carie Anne Ergo

-----Original Message-----

**From:** RealtorChris  
**Sent:** Tuesday, September 04, 2007 11:39 AM  
**To:** Ergo, Carie Anne  
**Cc:** Nelson, Chuck

12/6/2007

002017

**Ergo, Carie Anne**

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**From:** RealtorChris  
**Sent:** Tuesday, September 04, 2007 11:39 AM  
**To:** Ergo, Carie Anne  
**Cc:** Nelson, Chuck  
**Subject:** Comments

Dear Carrie Anne-

I want to make a couple of suggestions to you as you go about your day. I can assure you that no one besides you and my long-time friend Ald. Nelson will see this e-mail. You are welcome to show it to anyone you wish.

As a supporter of the Mayor's, I would suggest that you not throw anything more in the face of those of us who may be more concerned about PP than the Mayor's Office. Such statements as, "Where he rents his office is immaterial" "It's not a concern for the Mayor" "protect the taxpayers of Aurora against a potentially costly lawsuit" do not work for me. I appreciate that may be someones position, but I, too am a taxpayer.

While I am well aware when people do not agree with the third floor they are labeled as "conspiracy theorists" or "irresponsible", I can assure you I am neither. May I add that when I speak of the third floor, I am not just speaking about this administration, but all that I have served with.

I can only tell you that it is unfortunate that we must deal with this crisis at this time. We are enjoying a tremendous amount of "good" things happening. I recognize as a leader much of one's legacy is based on "good and bad" things and how they are handled.

As a Weisner supporter, I believe that rolling over to the deception of PP and the low level of moral decency that they bring with them would be wrong. I do not want my daughter or her friends to find the "teachings" of PP to be easy to receive. I do not want my daughter and all the kids here to get the idea that their parents are behind the curve in knowing what is best for them and some mysterious person behind the curtain has their best interests in mind. I do not want them to perform medical procedures on my daughter or the kids here without parental consent. I will not hide behind the lunacy in Springfield in making that known. They can't pass a budget easily. How can we expect them to have time to pass legislation that keeps our kids safe from life changing decisions? There must be big money in PP because they are willing to be unpopular everywhere they go.

Simply dismissing the legitimate concerns of many people in this community is not in the Mayor's best interest. I will continue to make my concerns known respectfully of the Mayor and I hope our concerns are not dismissed as "immaterial" or not in the interests of "taxpayers in Aurora."

Thank you for reading this,  
Alderman Chris Beykirch

12/6/2007

002018

# EXHIBIT J

002019

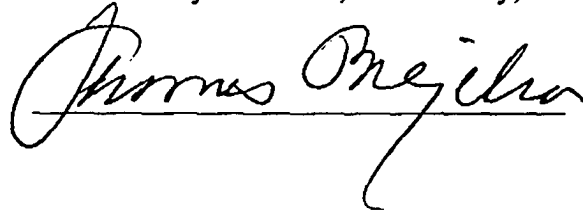
## 002020

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Sauk Village, Illinois 60411  
Tel. 708-662-0945  
email: [captain1970@thelifeline.net](mailto:captain1970@thelifeline.net)

CERTIFICATE OF SERVICE

Thomas Brejcha hereby certifies that he is one of the attorneys for the putative *amici curiae* and movants herein and that as such he caused copies of the foregoing Notice of Emergency Motion, together with said motion and declaration of Vincent Tessitore and appearances of counsel to be served to the persons to whom said Notice is addressed by filing same with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to all attorneys of record, including but not limited to the attorneys of record for plaintiffs and the defendant, who are identified on the face of this Notice, where their email addresses are also set forth. In addition, the undersigned caused copies of all papers to be telefaxed to said counsel at their fax numbers indicated on the face of the Notice, from telefax 312-782-1887 at 29 So. LaSalle Street, Suite 440, Chicago, Illinois 60603, and he handed copies to counsel in open Court, all at or near the hour of noon or shortly thereafter, on Thursday, September 20, 2007.

A handwritten signature in black ink, reading "Thomas Brejcha", written over a horizontal line.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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PLANNED PARENTHOOD CHICAGO	)	
AREA, an Illinois non-profit corporation,	)	
and GEMINI OFFICE DEVELOPMENT LLC,	)	
an Illinois limited liability company,	)	
	)	
Plaintiffs,	)	Case No. 07 C 5181
	)	
vs.	)	Hon. Charles R. Norgle,
	)	U.S. District Judge
CITY OF AURORA, a municipal corporation,	)	Magistrate Judge Brown
	)	
Defendant,	)	

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MOTION FOR LEAVE TO FILE SUBMISSION AS  
*AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION

Now come Eric Scheidler, an Aurora resident and volunteer coordinator of an unincorporated association, Fox Valley Families Against Planned Parenthood ("Fox Valley Families"), Vincent Tessitore, an Aurora property owner who regularly practices real estate and zoning law and thus participates in Aurora's "entitlement process" relating to permits, etc. and who is also a volunteer coordinator of Fox Valley Families, and Fox Valley Families, comprising many hundreds and even thousands of citizens of Aurora and nearby west suburban Chicago communities, and by their undersigned counsel, they ask leave of this Court to file a submission – including a short memorandum and supporting Declaration of Vincent Tessitore, with exhibits – as *amici curiae* in opposition to plaintiffs' motion for preliminary injunction herein.

In support, movants respectfully submit that their voice should be heard on the merits of

plaintiffs' motion inasmuch as they are critically interested in the subject matter and may prove of benefit to the Court in its adjudication on such an expedited basis of the relevant issues at bar. Furthermore, movants state as follows:

1. There has not been time for them to present this motion on a more timely basis as they have just reviewed the City of Aurora's submission in opposition to the plaintiffs' motion for temporary injunction in the last 24 hours. Indeed, they have yet to see the most recent papers, if any, filed by plaintiffs in support of their motion for extraordinary relief.

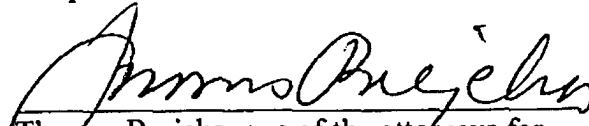
2. Nevertheless, these movants respectfully submit that the City's papers do not adequately inform this Court of the compelling evidence that already suggests that plaintiffs engaged in an entire series of flagrant misrepresentations before Aurora's officials. Surely requiring that applicants for City licensure or permits tell the truth qualifies as a generally applicable, utterly neutral requirement that is not abortion-specific nor spurred by any discriminatory animus toward anybody providing abortion services. Authorities that support this elementary proposition are not adequately reflected in the City's papers, and it is vital that the Court be apprised of them.

3. Indeed, the City is at odds with these movants in litigation now pending before Judge Kendall of this Court, instituted by these same movants (Tessitore participates by virtue of his affiliation with Fox Valley Families), in which movants are suing to redress the City's continued, persistent violation of their own fundamental rights, namely, their rights under the First Amendment.

4. These movants, many of whom are Aurora residents or who do business in Aurora, have a very important stake themselves in seeing that generally applicable, neutral requirements

are not cast aside in the name of "equal protection." Indeed, what plaintiffs seek here is "unequal protection," namely, an exception to or immunity from the same rules and regulations applicable to citizens generally.

WHEREFORE, said movants respectfully pray that the Court allow the filing of their submission in opposition to plaintiffs' motion for preliminary injunction; and that they have all other relief to which they may be entitled, on the premises in accordance with law.



Thomas Brejcha, one of the attorneys for  
said movants and putative *amici curiae*

Of Counsel:  
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

PLANNED PARENTHOOD CHICAGO	)	
AREA, an Illinois non-profit corporation,	)	
and GEMINI OFFICE DEVELOPMENT LLC,	)	
an Illinois limited liability company,	)	
	)	
Plaintiffs,	)	Case No. 07 C 5181
	)	
vs.	)	Hon. Charles R. Norgle,
	)	U.S. District Judge
CITY OF AURORA, a municipal corporation,	)	Magistrate Judge Brown
	)	
Defendant,	)	

---

MEMORANDUM OF *AMICI CURIAE* ERIC SCHEIDLER,  
VINCENT TESSITORE, AND FOX VALLEY FAMILIES AGAINST  
PLANNED PARENTHOOD IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION

This case is not about any right to choose abortion. Nor has any proof been adduced at bar to the effect that anybody's constitutional right to choose abortion is in jeopardy. On the contrary, this case concerns a very simple issue, namely, whether an applicant for a permit or license in the City of Aurora may be held accountable if it lies to City officials. Putting it bluntly, the question is whether plaintiffs have to tell the truth, equally as any other applicant for an Aurora City permit or license, or whether they may lie with utter impunity.

Even more precisely, the question before this Court now is whether Aurora may proceed to *investigate* the matter, given the compelling facts – amply documented – that plaintiffs *did lie*. As Aurora has pointed out, its investigation has yet to conclude. Indeed, it has hardly begun as questions have been raised about the impartiality and objectivity of its initially chosen

investigators. Now these *amici* understand from news reports (e.g., the *Aurora Beacon*) that the matter has been referred to the State's Attorney for Kane County, who is to proceed apace to find out if any laws have been broken.

While the City's papers merely point out that misrepresentations have been "alleged," the sworn Declaration of Vincent Tessitore – who made these same points repeatedly at Aurora City Council meetings – which *amici* submit herewith, shows an entire series of misleading omissions and affirmatively fraudulent misstatements of fact in plaintiffs' submissions to City officials. Not only did plaintiffs fail to state the true identity of the tenant who would occupy the newly constructed premises for which they sought City permits, but they misstated the obvious truth, insisting that the identity of that tenant – Planned Parenthood – was "unknown." Plaintiffs' own pleadings concede that occupancy by Planned Parenthood was foreseen and intended for years before this. The fact that plaintiffs were more candid before an Illinois financing authority only underscores the deliberate character of their fraud in written and verbal communications with the City of Aurora.

The right to choose abortion is not Planned Parenthood's right. It is a woman's right. No woman even claiming to have been deprived of such a constitutional right is before this Court. Nor is any physician before this Court. Only a business provider has filed suit. And any incidental impact on the accessibility of abortion services, stemming from the City's application of a neutral, objective and generally applicable requirement – to tell the truth – implicates nobody's constitutional rights. *See, e.g., Planned Parenthood of Central Texas, et al v. Sanchez*, 280 F.Supp., 590, at 609-10 (W.D. Texas. 2003), *remanded with directions*, 403 F.3d 325 (5<sup>th</sup> Cir. 2005)(district court finds patient rights *not* implicated by state law withholding funds for

abortions; injunction vacated on appeal and sent back for trial to see if plaintiff could meet its burden); *Planned Parenthood of Mid-Mo. & Eastern Kansas, Inc. v. Dempsey*, 167 F.3d 458, 464-65 (8<sup>th</sup> Cir. 1999)(quoting the “undue burden” test as laid down in *Planned Parenthood v. Casey*, 505 U.S. 833, 884-85, 877 (1992), to the effect that “[t]he fact that a law which serves a valid purpose, one not designed to strike at the right [to choose abortion] itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it,” and applying that test to reject a challenge to Missouri’s law prohibiting use of state funds for abortion which was intended to remove the state’s imprimatur from abortion services and to encourage childbirth).

Here, the fact that plaintiffs may be held to tell the truth, equally as any other permit applicant, may have an *incidental impact* on their ability to market their abortion services. But telling the truth and abstaining from the commission of fraud in communications with public officials is a quintessential example of a generally applicable, “neutral” requirement. It applies to *all* citizens. If withholding state funds for abortion services imposes no “undue burden” on abortion rights, then how could investigating an alleged breach of this basic requirement – to tell the truth to officials engaged in discharging their public responsibilities – even remotely threaten a violation of patients’ constitutional rights?

Finally, plaintiffs’ claim that its patients would have to travel so many miles if deprived – even temporarily – of the abortion services it proposes to offer come nowhere near what courts require as any showing of irreparable harm or imminently threatened invasion of protected rights. The Sixth Circuit U.S. Court of Appeals recently rebuffed a much stronger case on this score than plaintiffs have tried to make here. Thus in *Women’s Medical Prof’l Corp. v. Baird*, 438

F.3d 595, 599, 605 (6<sup>th</sup> Cir. 2006), while reversing in part and affirming in part the grant of preliminary relief, the court quoted what the Supreme Court said in *Casey* about “incidental effects.”<sup>1</sup> It then concluded that:

“while closing the Dayton [Ohio] clinic may be burdensome for some of its potential patients, the fact that these women may have to travel farther to obtain an abortion does not constitute a substantial obstacle ... Evidence in the record establishes that there are abortion clinics in Cincinnati, Columbus, Cleveland, and Akron. WMPC itself operates an abortion clinic in Cincinnati, which is approximately forty-five to fifty-five miles from the Dayton clinic. Thus potential patients of the Dayton clinic could still obtain an abortion in Ohio and, more significantly, could obtain an abortion at a WMPC-owned clinic within a reasonable distance from the Dayton clinic. Based on these facts, we cannot say that closing the Dayton clinic constitutes an undue burden on a woman’s right to choose to have an abortion simply because potential patients might have to travel somewhat farther to obtain an abortion. Like the waiting period requirement at issue in *Casey*, the fact that women may have to travel farther to obtain abortion services may be burdensome but it is not a substantial obstacle.” (citing *Casey*, 505 U.S. at 886-87).

This Court can and should take judicial notice of the readily ascertainable fact<sup>2</sup> that abortion providers are abundant and easily accessible in our Chicago metro area. Here is a list of abortion providers:

A & A Illinois Abortion Center  
675 East 79<sup>th</sup> Street  
Chicago  
773-483-7000

Abortion & Birth Control Services a/k/a Concord a/k/a Michigan Avenue Center of Health, 2415 South Michigan Avenue, Chicago, 312-707-8988

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<sup>1</sup>In *Casey*, the Supreme Court *inter alia* upheld a 24-hour waiting period for abortions, holding that it did not constitute a substantial obstacle, even though it would be “particularly burdensome” for “women who have the fewest financial resources, [or] those who must travel long distances.” *Pa. v. Casey*, *supra*, 505 U.S. at 886. The Sixth Circuit observed that under *Casey*, a “particular burden is not of necessity a substantial obstacle” (*Women’s Med’l Prof’l. Corp. v. Baird*, 438 F.3d at 605).

<sup>2</sup>Abortion clinics advertise freely and openly in the telephone listings, in the yellow pages and otherwise.

Family Planning Associates  
659 West Washington St.  
Chicago  
312-707-8988

Family Planning Associates - Albany  
5086 North Elston Avenue  
Chicago, Illinois 60630  
7730725-0200

Family Planning Associates - Medical Group  
7845 South Cottage Grove #104  
Chicago  
773-874-7513

(All FPA providers may be reached by toll-free call at 800-586-3764)

Planned Parenthood (plaintiffs' Near North Side facility)  
1200 North LaSalle Street  
Chicago  
312-226-1033

All Women's  
3140 West Irving Park  
Chicago  
773-478-0700

American Women's Medical Center  
2744 North Western Avenue  
Chicago  
773-772-7727

Women's Health Center  
5787 North Lincoln Avenue  
Chicago  
773-561-6602

Medical Group Treatment Center  
9011 South Commercial  
Chicago  
773-375-9709

American Women's

110 South River Road  
Des Plaines, Illinois  
847-296-9330

Dimensions a/k/a AAA Abortion Health Center  
1455 Golf Rd. #108  
Des Plaines, Illinois  
847-390-9300

Forest View  
2750 South River Road  
Des Plaines, Illinois  
847-484-5600

Women's Aid  
4751 West Touhy  
Lincolnwood, Illinois  
847-676-2428

Aanchor Health Center  
1186 West Roosevelt Road  
Glen Ellyn, Illinois  
630-495-4400

Abortion Health Center a/k/a ACU  
736 North York Road  
Hinsdale, Illinois 630-794-0645

Access Health Center  
1700 West 75<sup>th</sup> Street  
Downers Grove, Illinois  
630-964-0000

Advantage Health Care  
203 East Irving Park Road  
Wood Dale, Illinois  
630-595-1414

And in Winnebago County:

Northern Illinois Women's Center  
1400 Broadway, #201  
Rockford, Illinois

815-863-4101

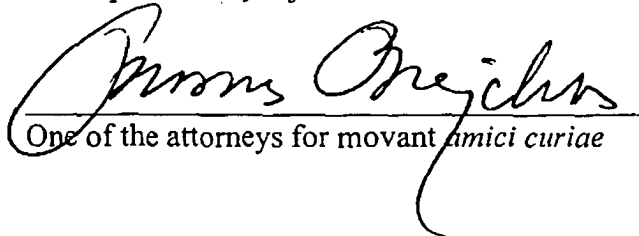
Clearly, if closing down of the only abortion provider in Dayton would impose no substantial hardship arising to the level of a constitutional violation on that provider's patients, withholding of plaintiffs' certificate of occupancy – pending an investigation of their apparently blatant fraud – threatens no constitutional violation here. On the other hand, dispensing with the fundamental requirement that permit applicants tell the truth would undercut the very integrity of Aurora's entire "entitlement process." Far from promoting the public interest, plaintiffs' come before this Court with visibly soiled hands. *See*, Declaration of Vincent Tessitore, submitted herewith

And the Court may also take judicial notice of the *Chicago Tribune* article, published last July, 2007, quoting Steven Trombley, plaintiffs' CEO, as follows:

"Frankly, I'm surprised we were able to keep it a secret for so long."

Plaintiffs never retreat from that statement, which is nothing less than a boast that they managed to flout the usual and regular course of Aurora's administrative permit process. Thus they have only themselves to blame in having to undergo a thorough investigation of their interactions with Aurora's officials. The materiality of questions about the intended use of the property is patent. Aldermen asked probing questions of plaintiffs' representatives, as is customary during the planning and permit process. Instead of being truthful and forthright, plaintiffs went out of their way to mislead and deceive those and other Aurora officials.

For all these reasons, the motion for preliminary injunction must be denied.

  
One of the attorneys for movant amici curiae

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# Abortion clinic built under wraps

Even Aurora official says he didn't know

By Bonnie Miller Rubin and James Kimberly  
Tribune staff reporters

Neighbors who drive by the bustling construction site in Aurora think they are seeing the completion of the "Gemini Health Center," just as the sign says. So do the painters, carpenters, electricians and other tradesmen who have been working on the project for the last eight months.

But in a few weeks the sign will be changed to reflect the true owners of the building: Planned Parenthood. At 22,000 square feet, this is among its larger facilities in the nation, providing a wide range of women's health services—including abortions.

Growth in the counties Aurora straddles — DuPage, Will,

Kendall and Kane—has created an intense need for more comprehensive and affordable women's health care. And while the majority of patients come to Planned Parenthood for birth control, testing for gynecological cancers or screening for sexually transmitted diseases, it is the abortions that have made this a stealth venture almost 35 years after Roe vs. Wade, which legalized abortion

PLEASE SEE CLINIC, PAGE 24

## CLINIC: Anti-abortion activists vow protests soon

CONTINUED FROM PAGE 1

nationwide. "Frankly, I'm surprised we were able to keep it a secret for so long," said Steve Trombley, president and chief executive officer of Planned Parenthood/Chicago Area, carefully avoiding a freshly painted wall as he offered a tour of the facility. "We didn't want anything to interfere with the opening... and, at this point, I don't anticipate anything will stop that from happening."

The \$7.5 million facility at 240 N. Oakhurst Drive, in DuPage County, adjacent to a Dominick's, is scheduled to open Sept. 18. In the planning stages since 2002, it is Planned Parenthood's first full-service site in the Chicago area in 20 years and the only one to perform abortions outside of a Near North Side Chicago location. Private donors contributed \$5 million

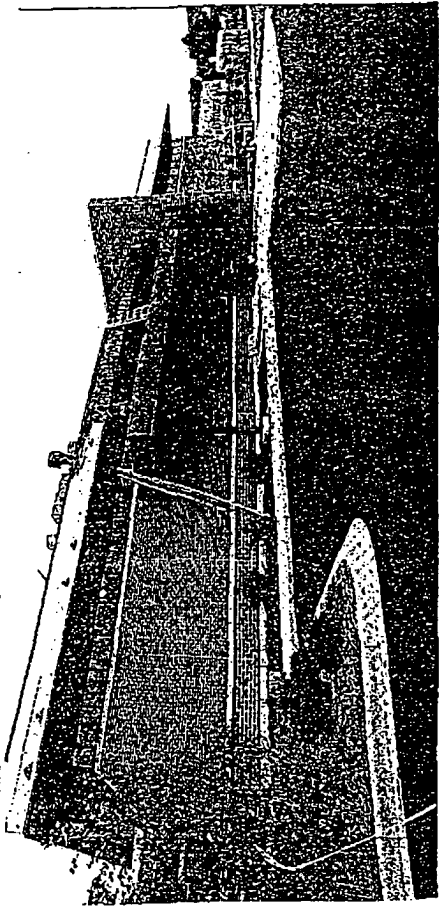


Steve Trombley, president and CEO of Planned Parenthood/Chicago Area, said the need for the facility is big.

toward its construction. It would be the only clinic performing abortions in Aurora; another clinic closed last year after its doctor retired.

As of Thursday, not a single protester had appeared on the scene. But even at this late date, anti-abortion activists vow to create some hurdles to abortion in Aurora.

"It is not going to be possible to stop construction," conceded Ann Scheidler, executive director of the Pro-Life Action League. "It's probably more a



Planned Parenthood in September is set to open this 22,000-square-foot facility in Aurora. In an effort to avoid protesters, as well as boycotts from building contractors, the ownership of the facility was kept secret by the group until recently.

Tribune photo by Terry Hamm

## Planned Parenthood headed for Aurora

Planned Parenthood provides a wide range of reproductive care services—including abortion. The site of the new full-service clinic is in DuPage County, but Aurora straddles DuPage, Will, Kane and Kendall Counties

community—but teens are sexually active," said Wendy Feingolds, who recently retired from the DuPage County Health Department and serves on the Illinois Caucus for Adolescent Health. "Anyone who is in contact with the school population recognizes the need."

While teen pregnancy rates have declined during the last decade, sexually transmitted infections—specifically chlamydia and HIV—have steadily increased in DuPage, Kane, Will and Kendall Counties, according to state health officials. Indeed, Planned Parenthood has opened three suburban "express" sites—in Naperville, Schaumburg and Orland Park—which mostly offer birth control and testing for sexually transmitted infections. The closest site to the new facility in Naperville, logged more than 13,700 visits last year.

Planned Parenthood may have won the battle by building the Aurora clinic in secrecy, but the war is far from over, anti-abortion forces vowed. The Pro-Life Action League held a strategy session on the clinic Thursday and decided to begin picketing the site Aug. 22. The group intends to target not only the clinic, said Scheidler, but customers of nearby businesses as well.

"We will be out protesting with our ugly graphic pictures that everyone hates. People don't want to go shopping or go to the dentist with those pictures out there," Scheidler said. Such tactics are precisely what have residents of the near-

Lack. The community of 2,200 homes—more than half are single-family residences—could best be described as "conservative and Republican." He predicted that among residents, "very few people are going to be in the 'I don't care' camp....

## Foes plan protests

Planned Parenthood may have won the battle by building the Aurora clinic in secrecy, but the war is far from over, anti-abortion forces vowed. The Pro-Life Action League held a strategy session on the clinic Thursday and decided to begin picketing the site Aug. 22. The group intends to target not only the clinic, said Scheidler, but customers of nearby businesses as well.

Beykirch, who represents that part of the city, said he learned that Planned Parenthood was building the clinic only last week. The property was zoned for a medical/office building, however, so the city could not have blocked construction—not that it should have tried, he said. He said he was disappointed that the agency felt it was necessary to be secretive.

The project appears to be full steam ahead. A staff of 24—answering "help wanted" ads for an unnamed clinic—is being hired. The sleek cabinetry and faux wood floors are in place. The airy examining and recovery rooms are almost complete. It has a large conference room where the employees can meet with civic groups.

"We want to introduce ourselves to the community... rather than be defined by our adversaries," Trombley said. Kendall County is the nation's second-fastest-growing county, increasing by 62 percent from April 2000 to July 2006, according to U.S. Census Bureau data released last month. "This is a medically underserved area," Trombley said.

The full-service Chicago clinic is 35 miles away a significant hurdle for Aurora's low-income and uninsured population. "This is a conservative com-

matter of damage control at this point."

Scheidler said the league is bringing to town the executive director of the anti-abortion group STOPP, which seeks to shutter Planned Parenthood, to a strategy meeting scheduled for Aug. 16.

## Avoiding builder boycotts

That the clinic was kept hush-hush for so long was no accident. Planned Parenthood adopted the strategy after a 2004 boycott by contractors stalled work for two months on a clinic in Austin, Texas. The boycott, organized by a concrete contractor, pressured subcontractors with being blacklisted from future employment. The contractor ended up quitting the job, and Planned Parenthood acted as its own general contractor to finish the facility.

Still, the tactic was heralded as a new economic tool in the arsenal of abortion foes.

As in Austin, word of the Aurora clinic was leaked to anti-abortion forces by a contractor, Scheidler said.

"He knew there was a recovery room. It was obviously a surgery center of some sort. I guess the bullet-proof glass and all the security cameras, she said, made him concerned," she said. Aurora Councilman Chris

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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PLANNED PARENTHOOD CHICAGO	)	
AREA, an Illinois non-profit corporation,	)	
and GEMINI OFFICE DEVELOPMENT LLC,	)	
an Illinois limited liability company,	)	
	)	
Plaintiffs,	)	Case No. 07 C 5181
	)	
vs.	)	Hon. Charles R. Norgle,
	)	U.S. District Judge
CITY OF AURORA, a municipal corporation,	)	Magistrate Judge Brown
	)	
Defendant,	)	

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DECLARATION OF VINCENT TESSITORE

Vincent Tessitore, upon oath, states and declares as follows:

1. I am a property owner in the City of Aurora, Illinois, defendant herein, residing with my wife and daughter in North Aurora, Illinois. I am a licensed Illinois lawyer and principal of the professional corporation, Tessitore & Koppenhoefer, located at 100 South River Street, Second Floor, Aurora, Illinois 60506 (tel. 630-892-1827, fax 630-701-1169), where I am engaged in the active practice of real estate & zoning law. My law practice largely comprises real estate and zoning matters in and about the Aurora and West Suburban Metro Chicago area. I have been practicing in the Aurora area for approximately the last seven years. I am also one of the volunteer coordinators of Fox Valley Families Against Planned Parenthood, an unincorporated association of persons residing in and about Aurora and nearby suburbs who have been conducting peaceable and prayerful protest vigils opposing a permanent establishment of

the proposed Planned Parenthood medical facility at 3051 East New York Street in Aurora.

2. In the course of my seven years of practicing real estate and zoning law in Aurora, I have become very familiar with the City of Aurora's ("City") "entitlement process." This term encompasses the procedures for securing municipal approval of planning, zoning, licensing, permitting, and municipal incentives. I have been through this process with respect to securing approval for new construction in the City on more occasions than I can now count. During my entire experience, City officials have repeatedly stressed the importance of making truthful and honest disclosures in response to their questions or concerns. This is especially true with respect to filling out written permits and communicating directly with City building officials and aldermen who also participate in this process. I am asking the Court for leave to appear as an *amicus curiae*, both individually and also on behalf of the unincorporated association of Fox Valley Families because I believe it very important that this Court have before it some of the compelling evidence that has prompted the City's investigation into the approval process by which plaintiffs secured a temporary occupancy permit.

3. I have reviewed Exhibit 1 to the Defendant's Response to Plaintiffs' Motion for Preliminary Injunction, filed as Document 19 in this lawsuit ("Defendant's Response"). Said Exhibit 1 is the Affidavit of Alayne Weingartz, the Corporation Counsel of the City of Aurora. Ms. Weingartz avers in paragraph 5 that the City "has a strong interest in maintaining the integrity of its permit application process for property development," having deemed that process "essential to the health, safety, and welfare of the City and its citizens." I fully concur, based on my many years of experience as a participant in this process, that the City has been insistent in this regard.

4. Attached to Ms. Weingartz's Affidavit as Exhibit A is what she avers to be a true and accurate copy of the minutes of a November 16, 2006, Planning and Development Committee meeting, which she describes as "part of the materials that indicated the potential for misrepresentation or fraud on the part of Gemini Development LLC." (Defendant's Response, par. 3). Indeed, these minutes vividly show the extent to which the City officials were affirmatively misled by plaintiff Gemini Office Development LLC ("Gemini") and also by plaintiff Planned Parenthood Chicago Area ("Planned Parenthood"). At page 5 of 11 in those minutes, Alderman Elmore, whose ward includes the subject property, asks a specific question, "Is this building being built specifically for a client?" To this question, an unidentified gentleman is quoted as responding: "We're in negotiations with a tenant; we do not currently have a lease but we still want to move ahead." At page 3 of 11, among "others present" is listed the name, "Tom Lehman, Gemini Office Development." It is clear to me that it must have been Mr. Lehman who made this statement, as no other representative of either Gemini or Planned Parenthood is listed as having attended that meeting. At page 7 of 11, Alderman Elmore is quoted again as referring to adjacent townhome residents, "pretty nice people," adding that because of the fact that "it's an office rather than commercial, they should be very happy," to which Mr. Macholl, a City staff member, added the comment that "they're not getting a strip mall." At page 8 of 11, Alderman Elmore is quoted as having commented further that this planned office building would be "a nice buffer between [the adjacent residents] and the retail center, and these usually are pretty quiet because they usually function in the daytime and that makes it nice. I'd be interested to know who your client is, when you can release that." Again, an unidentified "Gentleman," whom I presume to be Mr. Lehman, then answers, "Ok." These

minutes show that plaintiffs engaged in a deception of Aurora officials that I have never witnessed in all my years of practice. Clearly, Aldermen Elmore was led to believe that this would be a "spec building" (as commonly referred to), that is, an office building in which a third party tenant was to be found who would then lease space in a negotiated arms' length transaction. Alderman Elmore then moved to approve the proposed plan, and the motion carried 3-0.

5. This approval of plaintiffs' plan by the City's Planning and Development Committee represented the final action taken directly by Aurora's elected representatives. What remained was for plaintiffs to go through the building and permitting process. In this process the plaintiffs engaged in a continuing series of deceptive and fraudulent actions.

6. Thus attached hereto are a series of permit applications submitted by plaintiffs. The first, dated March 22, 2007, is a sign permit application submitted to the City's Department of Building and Permits. I obtained this document and the others attached hereto by filing a Freedom of Information Act Request to which the City responded on or about July 18, 2007. On reviewing this March 22d permit application, I noted on the first page that while Gemini Office Development is indicated as the property owner, with Thomas Lehman as the contact name, the "TENANT & Contact Name" was said to be: "UNKNOWN AT THIS TIME." This was patently false. Planned Parenthood avers in its complaint in this action that it had been planning to be the tenant in this facility since 2002. Moreover, in the Sunday, July 21, 2007, issue of the *Chicago Tribune*, in a story entitled, "Abortion clinic built under wraps," authored by reporters Bonnie Miller Rubin and James Kimberley, Steve Trombley, president and CEO of Planned Parenthood/Chicago Area, is quoted as saying, "Frankly, I'm surprised we were able to keep it a secret for so long," etc.(Emphasis supplied).

7. The next attachment is an application for sprinkler permit, dated March 23, 2006. Here, too, plaintiffs identified the property owner as Gemini Office Development. No contact person was identified, however, and the TENANT & Contact Name was simply said to be: "SAME." Of course, this too was false.

8. The next attachment to this Declaration is a very important permit application for construction of the building, also submitted to the City's Division of Building and Permits. At the very top, the plaintiffs circled "OR" rather than checking off the box to indicate a "Completed Project resulting in a Certificate of Occupancy." This indicated to the City, according to standard practice among those of us who regularly engage in this process, that the building was to be what is commonly referred to as a "white envelope for a future tenant." What this means is that the plaintiffs were to build a shell, completing the outside of the structure but without interior "demising" walls, millwork, equipment or other components of what is commonly referred to as "build out." In the usual and ordinary course, once a tenant was found and a lease negotiated at arms' length, another "commercial remodeling" permit would be applied for, in order to construct the build out to the tenant's specifications and requirements. Here, too, the property owner was identified as Gemini Office Development, whose contact name was said to be Thomas Lehman. Also, the TENANT was identified as "Gemini Office Development," with Dainius Petronis named as its "contact." Obviously, this was false too.

9. The fourth attachment hereto is an application for a permit to do foundation work dated November 22, 2006. Here the property owner is identified as Gemini Office Development LLC, with Thomas Lehman again identified as contact, while the TENANT is identified as "Gemini Medical Office," whose contact person is said to be Teri Huyck. A person by that name

is now listed in the minutes of the Illinois Finance Authority, dated May, 2007, as Chief Operating Officer of plaintiff Planned Parenthood. Again, this tenant identification was false.

10. The fifth and final attachment hereto is a commercial miscellaneous permit application for a construction trailer at the building site, dated December 4, 2006. Here the owner was listed, again, as Gemini Office Development, with Thomas Lehman as contact person. His address was listed here as being in Westmont, whereas previously his address had been indicated as Wacker Drive in downtown Chicago. The TENANT was identified, falsely, as Gemini Office Development with Dainius Petronis as contact person, whose address was at the Wacker Drive location.

11. Upon reviewing these permit applications and noting all their false statements, I made a presentation before the City Council at its meeting held on August 28, 2007. I related to the Aldermen and the Mayor at that meeting my professional opinion that plaintiffs had engaged in a fraudulent abuse of the City's entire permit process. At that same meeting, prior to speaking I provided each of the Aldermen with copies of these false permit applications. At the end of that meeting, which continued through the early morning hours of August 29<sup>th</sup>, Mayor Thomas J. Weisner told all those in attendance that he had ordered an investigation to be undertaken as to the process by which plaintiffs had obtained their approvals to build the facility. He said that he had a particular investigator chosen, but if Council members objected to that investigator he would appoint someone else to conduct the City's investigation.

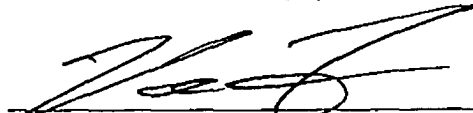
12. I was also present at the City Council meeting held on September 11, 2007. At that meeting Alderman Richard Irvin explained that the City was not looking into the issue of whether or not abortion services should be provided or whether or not women's health care

services were needed in Aurora. Rather, he stated, the City was looking into whether fraud or other errors occurred during the permit approval process. I also made a speech to the Council at that meeting, further emphasizing that the evidence showed that a long series of deceptions had been perpetrated by Gemini, which has turned out to be a wholly owned subsidiary of Planned Parenthood.

13. What is at stake here, in my professional opinion, is the extent to which the City of Aurora may continue to require honesty, candor and truthfulness on the part of those who seek property entitlements or other official governmental actions. If this abuse of the entitlement process – that is, the planning and permit process – were allowed to harden into a precedent, then the future development of the City of Aurora, Illinois' fastest growing community, would be placed in jeopardy.

FURTHER THIS DECLARANT SAYETH NOT.

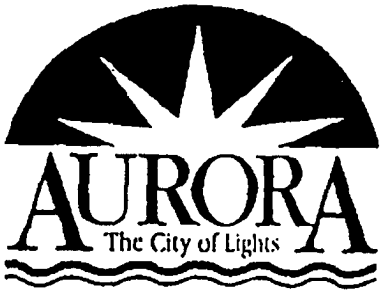
Subscribed and sworn to, under penalties of perjury as prescribed by law, pursuant to the laws of the State of Illinois and the United States of America, this 19 day of September, 2007.

  
\_\_\_\_\_  
Vincent Tessitore, Declarant

Of Counsel:  
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A public interest law firm  
29 South LaSalle Street - Suite 440  
Chicago, Illinois 60603  
Tel. 312-782-1680  
Fax 312-782-1887  
ARDC #0288446

C-BU  
06.3529

## SIGN - SIGNAGE APPLICATION FORM

FOR OFFICIAL USE ONLY	TOTAL FEE <u>148.00</u>	 <b>AURORA</b> The City of Lights
PERMIT APPLICATION NO. <u>07-746</u>	Number of Signs (inc. each side) _____ x \$74 = _____	
SUBMITTED <u>3122107</u>	Total of S.F. in excess of 50 S.F. (ea. sign evaluated individually)	
NOTIFIED <u>413107</u>	_____ x \$0.31 = _____	
ZONING <u>PDD</u> <u>Qu 4/2</u>	WEB <a href="http://www.AURORA-il.org">www.AURORA-il.org</a> FAX (630) 892-8112 TELEPHONE (630) 892-8088	
DIVISION OF BUILDING & PERMITS 65 S WATER ST AURORA, ILLINOIS 60505		

## LAND / PARCEL INFORMATION

PROPERTY ADDRESS <u>240 N. OAKHURST DRIVE</u>	PICTURE # LOT # <u>67-20-302-081</u>
SUBDIVISION _____ UNIT / PHASE # _____	
COUNTY <input type="checkbox"/> KANE <input type="checkbox"/> DuPAGE TOWNSHIP 11 12 04 TOWNSHIP SECTION # <u>20</u>	
(CHECK ONE) <input type="checkbox"/> KENDALL <input type="checkbox"/> WILL (CIRCLE ONE) 14 <u>1507</u>	
(Call tax assessor's office with questions)	03 01 BLOCK # (if known) <u>302</u> LOT# (if known) <u>081</u>
PROPERTY OWNER & Contact Name <u>GEMINI OFFICE DEVELOPMENT</u>	TENANT & Contact Name <u>UNKNOWN AT THIS TIME</u>
OWNER'S ADDRESS <u>ONE SOUTH WACKER DR #200</u>	ADDRESS _____
<u>CHICAGO, IL 60606</u>	
PHONE # <u>(630) 963-8184</u>	PHONE # ( ) _____
FAX # <u>(630) 963-4475</u>	FAX # ( ) _____
E-MAIL <u>TWLEHMAN@AMERITECH.NET</u>	E-MAIL _____

## ZONING INFORMATION

Zoning (CHECK ONE) ☐ R-1 ☐ R-2 ☐ R-3

Classification ☐ R-4 ☐ R-4A ☐ R-5 ☐ R-5A

☐ B-1 ☐ B-2 ☐ B-3 ☐ B-B

☐ SPECIAL USE (CHECK IF APPLICABLE)

☐ M-1 ☐ M-2

☐ O ☐ ORI ☐ RD ☒ PDD

☐ DC ☐ DF C.O.A. Required

## SUBMITTAL REQUIREMENTS

☒ DIMENSIONED SIGNAGE DRAWINGS

☒ PLOT PLAN W/ SETBACKS DIMENSIONS

OR

☐ DIMENSIONED BUILDING ELEVATIONS

## SIGNAGE INFORMATION

VERBIAGE ON SIGN  
NOT KNOWN AT THIS TIME -

TENANT IS NOT DETERMINED

Cost of Electrical Work \$ 5000

Cost of Signage Work \$ 4500

SIGN - Permit Application

## SIGNAGE INFORMATION

☐ WALL SIGN (sgnw)

SIGN DIMENSIONS

WIDTH \_\_\_\_\_ HEIGHT \_\_\_\_\_ AREA \_\_\_\_\_ SF

SIZE OF BUILDING FAÇADE

WIDTH \_\_\_\_\_ HEIGHT \_\_\_\_\_ AREA \_\_\_\_\_ SF

CUMULATIVE DIMENSIONS of existing SIGNAGE

WIDTH \_\_\_\_\_ HEIGHT \_\_\_\_\_ AREA \_\_\_\_\_ SF

☒ SITE SIGN ( MONUMENT & POLE ) (sgns)

SIGN DIMENSIONS

WIDTH 12'0" HEIGHT 4'3/4" AREA 4.4 SF

BASE OR POLE

HEIGHT NA

OVERALL

HEIGHT 3'11 3/4"SMALLEST SETBACK DISTANCE 30'NUMBER OF SIDES TO SIGN 2

002041